

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 514 of 1997

with

CRIMINAL REVISION APPLICATION No. 532 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

HIMATSINH NARUBHA JADEJA

Versus

K K PATEL

Appearance:

1. Criminal Revision Application No. 514 of 1997

MR KJ SHETHNA for Petitioner

MR BM GUPTA for Respondent No. 1

MR SV RAJU for Respondent No. 2

MR SR DIVETIA APP for Respondent No. 3

2. Criminal Revision ApplicationNo 532 of 1997

MR SR DIVETIA APP for Petitioner

MR BM GUPTA for Respondent No. 1

MR SV RAJU for Respondent No. 2

MR GIRISH D BHATT for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/08/1999

CAV JUDGEMENT

Heard the learned advocates for the respective parties.

These two Revision Applications arise of the judgment and order dated 25th August, 1997, passed by the learned Additional Sessions Judge, Court No. 17, Ahmedabad, in Criminal Revision Application No. 198/97. Both these Revision Applications are heard together and are disposed of by this common judgment. The applicant in Criminal Revision Application No. 514/97 [hereinafter referred to as 'the complainant'] is the original complainant in Criminal Case No. 1463/94, and the applicant in Criminal Revision Application No. 532/97 is the State Government. The Opponents nos. 1 and 2 in these two Revision Applications [hereinafter referred to as 'the accused'] are the accused nos. 1 and 2 in the aforesaid Criminal Case No. 1463/94.

The facts leading to the present applications are as under :-

The complainant and the accused all at the relevant time, were the Police Officers. On 22nd August, 1992, one Jafarkhan Pathan lodged a complaint to the Commissioner of Police in respect of the kidnapping of his brother Jahangirkhan by sending a Telegram. On 24th August, 1992, said Jafarkhan lodged a formal complaint in respect of the said offence before the Magistrate concerned. In the complaint lodged before the Magistrate, the complainant and some others were named as accused persons. An inquiry under section 156 (3) CRPC was ordered. The said complaint was registered as M.Case No. 124/92, and the accused were entrusted the investigation thereof. In course of the investigation, the accused arrested the complainant. Ultimately, after investigation, the learned Magistrate, under his order dated 30th July, 1994, held that the complaint was maliciously false and granted "B" summary without prosecution. The complainant, on 25th July, 1994, lodged a complaint in the court of the learned Metropolitan Magistrate Court No.5, Ahmedabad, against the accused, the opponents nos. 1 and 2 herein, and the above referred Jafarkhan and Jahangirkhan. The same was registered as Criminal Case No. 1463/94. The complainant alleged that the said four accused had

hatched a conspiracy against the complainant in lodging the complaint against the complainant and in arresting him. Thus, the accused had committed an offence punishable under sections 166, 167, 176, 219, 220, 323, 342, 417, 34, 109, 120 (B) and 201 of the IPC and section 147 (c) of the Bombay Police Act. He further stated that the said act of conspiracy was not committed by the accused in course of their duty and, therefore, no previous sanction of the Government was required to be obtained for prosecuting the accused. Upon presentation of the said complaint, the learned Magistrate recorded the statement of the complainant on 27th July, 1994, and on 26th September, 1994, ordered summons to be issued against all the accused persons. Feeling aggrieved, the accused moved an application Ex.3 and submitted that the acts complained of were committed by the accused in due discharge of their duties and the accused, therefore, can not be prosecuted without the prior permission of the Government under section 197 CRPC. The said application was heard by the learned Magistrate. The learned Magistrate, under his judgment and order dated 17th May, 1997, held that the question whether the acts complained of were committed by the accused nos. 1 and 2 in discharge of their duties or not, required further evidence and that the said question could be decided after further evidence was recorded and sufficient material was placed before the Magistrate. Feeling aggrieved, the accused preferred Criminal Revision Application No. 198/97 before the learned Additional Sessions Judge, Ahmedabad, and the same was allowed under the judgment and order dated 26th August, 1997. Feeling aggrieved, the complainant and the prosecution have preferred the above Revision Applications.

The learned Additional Sessions Judge has held that the learned Magistrate has erred in postponing the issue and in not deciding the application Ex.3 on the evidence on the record. She has held that the acts complained of were committed by the accused nos. 1 and 2 in discharge of their official duties and therefore previous sanction under section 197 CRPC was required to be obtained before prosecuting them. She has also held that in view of section 161 of the Bombay Police Act, the complaint was time barred and ought not to have been entertained. The learned advocate Mr. Shethna has appeared for the complainant-applicant in Criminal Revision Application No. 514/97 and has supported the judgment of the learned Magistrate. The learned APP Mr. Divetia also has supported the said judgment and order. They have relied upon the judgment of the Supreme Court in the matter of RONALD WOOD MATHAMS & ORS VS STATE OF

The applications have been opposed by the learned advocates Mr. B.M.Gupta and Mr. S.V.Raju. They have supported the judgment and order of the learned Additional Sessions Judge. It has been further argued that the Revision Application by the prosecution is not maintainable. In support of their contention, they have relied upon plethora of judgments. They have emphatically argued that the accused were entrusted the investigation in respect of the above referred M.Case No. 124/92 lodged against the complainant. The statement of the complainant was recorded in course of investigation, and as a result of the said investigation, he was arrested. All of the said acts were committed by the accused in discharge of their official duties, and the previous sanction to prosecute under section 197 CRPC is sine-qua-non. Even otherwise, in view of the provisions contained in section 161 of the Bombay Police Act, the complaint was hopelessly time barred.

There can not be any dispute with regard to the principle enunciated in the judgments relied upon by the learned advocates. I do agree that for the acts committed in discharge of their official duties, no prosecution can be lodged against the public servants without previous sanction of the appropriate Government as envisaged under section 197 CRPC. I also agree with the contention that no prosecution shall be maintainable after more than one year of the act done under the colour or in excess of any duty or authority. However, the question here is whether sufficient evidence was placed before the learned Magistrate to hold that the acts complained of were committed in discharge of the official duties as contended and whether the learned Additional Sessions Judge was right in exercising her revisional jurisdiction and to interfere with the order made by the learned Magistrate. In my view, the learned Magistrate was right in holding that the question required further evidence. If the prosecution ultimately proves that a conspiracy was hatched by the accused persons, the court may take a view that the conspiracy was not part of the duty and any act done in furtherance of the said conspiracy, can not be said to have been done in discharge of the official duties, and in that case, previous sanction of the appropriate Government may not be necessary. The question, therefore, could not have been decided at the stage of lodging the complaint. It could not have been conclusively held that the acts complained of were committed by the accused in discharge of their duties or vice-a-versa. Besides, the question

of limitation under section 161 of the Bombay Police Act was never raised before the learned Magistrate. It was, therefore, not open for the accused to raise the said contention before the learned Additional Sessions Judge and the learned Additional Sessions Judge in entertaining and deciding the said issue has clearly transgressed her jurisdiction. Further, the order dated 17th May, 1997, made by the learned Magistrate did not conclude the issue raised before him and, therefore, was necessarily an interlocutory order. In view of the provisions contained in section 397 (2) CRPC, a Revision against the said order would not be maintainable. In my view, therefore, the Revision Application No. 198/97 preferred before the learned Additional Sessions Judge was not maintainable. The learned Additional Sessions Judge has thus transgressed her jurisdiction in entertaining and allowing the said Revision Application.

The judgment and order dated 26th August, 1997, passed by the learned Additional Sessions Judge Court No. 17, Ahmedabad, in Criminal Revision Application No. 198/97 is quashed and set aside. The order dated 17th May, 1997 made by the learned Metropolitan Magistrate, Court No. 11, Ahmedabad, on application Ex.3 in Criminal Case No. 1463/94 is restored. The Criminal Case now shall proceed further in accordance with law.

The Criminal Revision Application No. 514/97 is allowed. In view of the order made on Criminal Revision Application No. 514/97, no further order is required to be made on Criminal Revision Application No. 532/97 and is accordingly disposed of.

27.08.1999

Learned advocate Mr. Raju appearing for respondent no. 2 prays that the judgment be stayed for a period of three weeks. Request is rejected.

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JOSHI*